88-875 (1)

Supreme Court, U.S.
FILED
OCT 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88 -

IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1988

CAROLE L. TAYLOR,

Petitioner,

v.

ROBERT R. TAYLOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPERIOR COURT OF PENNSYLVANIA

PITTSBURGH DISTRICT

Carole L. Taylor, Pro Se
Petitioner
5062 Rosecrest Place
Pittsburgh, PA 15201
(412) 661-4833

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STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the Lower Court erred in denying the Petitioner's right to due process of Law in the Equitable Distribution of marital assets?

A. Whether the Lower Court did err in granting Respondent the marital property located at 6539 Stanton Avenue, Pittsburgh, Pennsylvania 15206, and in ignoring the issue of contempt of Equity on the Stanton Avenue property?

B. Whether the Lower Court did err in denying Petitioner, causing prejudice against the Petitioner and leaving the Petitioner and the children of this union without the Constitutional Rights of life, liberty, and property considering the Rosecrest property liabilities; considering

Respondent's second family and not the first.

C. Whether the Lower Court did err in not considering the issues of insurance, taxes, educational expenses, equitable division of property, and alimony as requested by the Petitioner?

* All parties to the proceeding in the court below are listed in the caption.

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PETITION FOR WRIT OF CERTIORARI

TO THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner, Carole L. Taylor, petitions the Court to issue a writ of certiorari to the Superior Court of Pennsylvania in this case.

REFERENCE TO LOWER COURT OPINIONS

On the instant case there were filed two Opinions. Honorable Judge Stanton Wettick issued an initial Opinion on November 18, 1987 after the trial in July of that same year. After post-trial motions, he again affirmed his original findings in an Opinion dated January 6, 1987.

The Appellant appealed the Lower Court decision to the Honorable Superior Court of Pennsylvania which affirmed the Lower Court Order in its Opinion dated September 8, 1987.

The Appellant then sought affirmation of her Constitutional Rights in the Supreme Court of Pennsylvania. The application for appeal was denied in a Court Order dated

September 16, 1988, and no Opinion was filed.

* All Opinions mentioned above can be found in the appendix attached under separate cover.

BASIS OF FEDERAL JURISDICTION

The instant case comes before this Court in hopes of rectifying the error made in the Lower Court in denying the Appellant her Constitutional Rights under the First, Sixth, Eighth and Fourteenth Amendments.

Constitutional Rights and the violation thereof of those rights are questions that fall within the jurisdiction of the Federal Judicial System. Thus, this matter has come before this Honorable Court for resolution.

CONSTITUTIONAL PROVISIONS

The issue of the Court's decision being contrary to law and against the Constitutional Rights of the Appellant has been raised at each level of the Court System. However, to date no Court has addressed the issue of Constitutional Wrong.

The Lower Court Order is in violation of the Appellant's Constitutional Rights under the First, Sixth, Eighth and Fourteenth Amendments.

Specifically, and forthright is the Appellants rights to life, liberty, and property. The Appellant seeks redress in this Court based upon these violations of her Constitutional Rights and herein sets forth those violations pursuant to Rule 21.1 (f).

III. The Appellee should not be allowed to discard the expenses of his original family for a second family. The Appellee can adequately afford to relieve some of the responsibility incurred during the marriage: the law states that the first family is paramount. If the Appellee is to receive a percentage of the assets, why is he not also required to accept a percentage of the debts incurred.

IV. The Lower Court's award was not fair, just or equitable. The Appellant seeks relief from the consequences of this error made on the part of the Lower Court. This is a valid position and one that should be considered by this Honorable Court.

STATEMENT OF THE CASE

This is an appeal from the Order of the Lower Court affirming the Equitable Distribution of the marital assets which favored the Appellee, in the Common Pleas Court of Allegheny County, Pittsburgh, on January 6, 1987. On November 13, 1986, the Lower Court divided the marital real estate on a 55/45 percentage basis in the Court's Written Opinion.

The instant case began with a final decree of divorce on or about April, 1985, with a Petition for Equitable Distribution, Alimony, and Counsel Fees filed on August 19, 1985. The Appellee then filed Interrogatories directed to the Appellant on August 25, 1985. The Appellant filed Objections to the Appellee's Interrogatories on or about September 25, 1985.

The Appellee filed an excessive number of Interrogatories (452) which were denied by the Court. Maximum number is 50 under PA. R.C.P. Appellee then filed 500 still denied by the Court. The Appellant then filed Interrogatories directed to the Appellee on or about December 1985. No response from the Appellee was received. Several months later in January 1986 after spending much time seeking justice in regards to support issues, the Appellant filed a Motion to Compel the Appellee to File Interrogatories received on February 3, 1986. Then a Motion to Request Hearing for Conciliation was filed. Second Interrogatories from the Appellee were filed on February 28, 1986. At the Conciliation Hearing on April 29, 1986, the Court Ordered both parties to file

Inventory and Appraisement Statements no later than November 22, 1985. The Appellant filed on November 22, 1985, as ordered; however, the Appellee did not file until February 4, 1986. A second conciliation hearing was heard on December 30, 1985, where the Order was given for both sides to seek discovery ending on March 31, 1986.

The Court Ordered that Pre-Trial Statements were due fifteen (15) days before the Pre-Trial Hearing, which was to be scheduled for April 27, 1986. At that hearing on April 27, 1986, a second Pre-Trial Hearing was scheduled for June 5, 1986. The Appellant then filed a Motion to Compel the Appellee to pay for Counsel Fees per Judge Wettick's Order on December 30, 1985. On January 15, 1986, said motion was taken before Hearing Office McDonald. Counsel Fees were

granted to the Appellant in the amount of $1,500.00 on retainer. Appellee took exception to the award and scheduled a hearing on exceptions to be heard on February 14, 1986. There, Judge Kaplan Ordered that the Appellant must obtain counsel, then receive the fees. At the first conciliation hearing, the Court gave both parties ninety (90) days for discovery. At the end of the ninety days the Appellee's counsel requested additional time for discovery and was granted that plea. At the second conciliation hearing once again Appellee's counsel requested an extension of time on discovery, but it was denied. Appellee amended Pre-Trial Statement on or about May 8, 1986, as filed in Court.

The Court signed an Order in a hearing on Contempt in Equity against the Appellee. The Order stated the matter would be considered at the time of Equitable Distribution in Divorce Hearing before the Honorable Judge Stanton Wettick.

The Appellee then filed a Motion for Attorney's Fees from the Appellant to be presented on February 10, 1986. The motion was denied.

On or about June 3, 1986, a trial date was set for July 14, 1986, before Hon. Judge Stanton Wettick. After the trial, the Lower Court issues a memorandum and Order of Court dated November 18, 1986. Both parties filed Post-Trial Relief Petitions. The Court gave

little or no consideration to any of the issues presented in either the Pre-Trial Statement, or the Post-Trial Relief Petition of the Appellant. Thus, when the Lower Court handed down the final Court Order Memorandum and Opinion on January 6, 1987, the Appellant felt compelled to appeal to this Honorable Court these issues. The Superior Court affirmed the Lower Court opinion without consideration of the Constitutional violations imposed upon the Appellant. The Supreme Court of Pennsylvania failed to hear the case at all. Thus, the Appellant has come to the United States Supreme Court is search of a distribution which is just, equitable, and Constitutional. This is where the case now stands.

STATEMENT OF REASONS FOR APPEAL

The Appellate Courts below did err in deciding a question of substance to the Appellant and her family which has violated the Constituitonal Rights of both the Appellant and her children which places this case in the jurisdiction of this Honorable Court.

I. As the Order now stands, the marital properties were not divided equitably. The Appellant is given all the financial expense and responsibility for the residence property, while the Appellee is given a property which is pratically paid off and he has been using it as rental property since 1979, while also being rewarded for having extramarital affairs, and illegitimate children.

II. The Lower Court failed to conduct a fair and impartial hearing by accepting frivolous issues raised by the Appellee as fact, while not considering fair and pertinent issues raised by the Appellant. Evidence of this fact is in the Court's determination of property value. It valued the Stanton Avenue property (given to the Appellee) at $35,000.00 higher than it's appraisal value. Yet, valued the Rosecrest property (given to the Appellant) at $32,000.00 not only lower than the other property, but $22,000.00 less than the $54,000.00 appraisal value.

ARGUMENT

I. THE LOWER COURT DID ERR IN DENYING THE APPELLANT'S RIGHT TO DUE PROCESS OF LAW IN THE EQUITABLE DISTRIBUTION OF MARITAL ASSETS.

The Court System below has erred in denying the Appellant her right to due process of law. The Courts below have failed to consider the unequal division of marital assets as issued by the Common Pleas Court Judge.

As the Order now stands, the Appellant is given the financial expense of the Rosecrest Property, which includes but is not limited to: $14,000.00 in tax debt; $30,000.00 in mortgage fees left to be paid; and $8,000.00 of major maintenance on the property. The Appellee received the Stanton Avenue property which has only $4,000.00 owed on it, no tax debt (known of) and he receives rental monies from the property.

The Lower Court did err in assessing property value. It valued the Stanton Avenue property (which was awarded to the Appellee) at $35,000.00. This figure is higher than it's appraisal value as presented to the Court. However, the Lower Court valued the Rosecrest Property (which was awarded to the Appellant) at $32,000.00. This figure is not only lower than the value of the marital property given to the Appellee, but the Court valued the Rosecrest property $22,000.00 dollars less than the actual appraisal value. ($54,000.00) Where did the Court get these figures? This value is far less than even the City Appraised Value of $63,000.00. and far less than the values presented by both sides (represented by Certified Appraisers) at the Equitable Distribution Trial.

The Court did err in awarding the Appellee 45% of the assets, but no percentage of the debts. The Appellee can adequately afford to relieve some of the responsibility of those

debts incurred from the time of seperation through the date of trial (July, 1986).

The Court did err in denying the Appellant her Constitutional Rights to life, liberty and property.

II. THE LOWER COURT DID ERR IN GRANTING APPELLEE THE MARITAL PROPERTY LOCATED AT 6539 STANTON AVENUE, PITTSBURGH, PA 15206, AND NOT CONSIDERING THE ISSUE OF CONTEMPT IN EQUITY A VIOLATION OF A COURT ORDER.

The Court did err in not considering the issues raised in the Appellant's Pre-Trial Statement about the Stanton Avenue property. The Court should have considered the assets at the time of separation. The Stanton Avenue property was purchased with the Appellant's money. Both parties resided in the home for

five (5) years. Since 1979, the Appellee has rented out the property unlawfully and against a Court Order. The circumstances of the Stanton Avenue property should have been considered through the time of Equitable Distribution in Divorce (1986). Instead of the Court considering the issue of Contempt in Equity, the fact is that all the rental monies from 1979 to 1986 went solely to the Appellee unlawfully. Only one check was brought into Court at the Trial as proof that the Appellee receives $300.00 per month from the unlawful renting of the property. The crux of the issue is that he is not to be receiving any monies from the property. The Appellant has been denied her

rights in the marital property for almost nine (9) years, while the Appellee has been prospering from his profits. The Appellant was informed by the Lower Court that if the Appellee continued to rent the property against the Court Order of September 9, 1979, he would have to account to and pay the Appellant monies retroactive to the date of that Order. This was not done. The Appellee has made a mockery of the Lower Court and its Order. The Court tried to place a veil over the issue by overlooking Contempt in Equity because the mortgage payments were almost as much as the incoming rent. This is not true. In 1979 the mortgage was only $140.00 a month. Where did the difference in

money received and mortgage payments made go? The property is jointly owned and the Appellant has a Constitutional Right to share in the property assets. Especially since she was responsible to pay the water, sewage, and fire insurance payments; and brought to the trial hundreds of checks going beyond the preponderence of evidence to show that she paid from 1976 to 1986 monies out of her pocket on that property. The amount totaled $2,037.56, which the Lower Court did not award to the Appellant. It would seem that the Appellee has been rewarded for disobeying a Court Order and denying the Appellant's rights to her share in the property that is jointly owned.

The Lower Court did err when deciding that the marital property division given the Appellee--the Stanton Avenue property because he took care of the Stanton Avenue property. This is not true. The Appellant paid the water, sewage, and fire insurance on the property. The Appellee did not pay out anything, but receiving incoming rent payments which were not shared with the Appellant. The Appellant had no choice but to become the custodian of the Rosecrest property. The Appellee abandoned that property in 1976 less than one year after its purchase. The Appellant was left with two minor children who required shelter. The Appellee, by his own admission, abadoned the Rosecrest property and then seized the Stanton Avenue property, but not

to live in the property, to rent it out while he lived in a luxurious apartment in the Washington Plaza.

The Lower Court did err in awarding the Appellee the Stanton Avenue property because he "seized" the property. The Appellant was denied her Constitutional Rights to the property. Further, the Court failed to recognize the Appellant's rights by a Court Order that unilaterally enjoined both parties from renting the property without the permission of the other. The Appellant was not allowed to lay claim to her property, while the Appellee abused and ignored the law everyday he rented the property out. The Appellant on several occasions tried to recover her rights in the

property even up to the date of the trial (July 19, 1980), but was denied her petition because the marital properties were said to be tied up in Court due to the Divorce issues on Equitable Distribution still before the Court.

The Lower Court did err in division of the properties by equating the Rosecrest property with the Stanton Avenue property. For in dividing the assets of the marriage, the debts incurred during the marriage through 1986 were not considered on the properties. Thus, the massive debt was left for the Appellant to be responsible for while the Appellee was awarded a property to continue to rent out. The Appellee was given the property which is almost paid off

(only FOUR THOUSAND DOLLARS ($4,000.00) owed on it to continue a prosperous lifestyle for him while the Appellant struggles with a THIRTY THOUSAND DOLLAR ($30,000.00) mortgage and tax debt for another twenty (20) years. Where is the equity?

The Appellant was forced to care for the Rosecrest property because it was the family home. The Appellant had to keep a roof over her head and the heads of the two minor children of the union who were also abandoned by the Appellee. One child was nine (9) years old and the other was only four (4) years old at the time of abandonment, December 23, 1976 (two days before Christmas. Therefore, the Appellant had no choice. She was on a medical (not able to

work), but still had to pay the mortgage, taxes, light, gas, and other expenses for the Rosecrest property. The Appellee was only to pay $375.00 in support ($225.00 for the children and $150.00 for Alimony). This measly amount of money did not cover the mortgage and taxes which were $442.00 per month. The Appellee's forced attached wages never took adequate care of the needs of the Appellant and the children of this union. Thus, the Lower Court did not show equity in the division of the marital property. The Equitable Division of these properties does not do what is required by the Court, that the result of the division be "just" or "equitable".

E.G., A.R.S. (Ariz.) 25-319 (division of property as is "just and right"); K.S.A. (Kan.) 60-1610; Vernon's Ann.Civ.St. art. 4638 (division to be "just and right"). The California statute has been construed to mean that the innocent wife may, in the court's discretion, be awarded up to the entire community property. Barham v. Barham, 33 Cal. 2d 416, 303 P.2d 289 (1948). E.g.m. C>R>S> 1963 (Colo.) 46-1-5 (2) (division to be "fair and equitable"); KRS (Ky.) 403.060 (division to be "equitable"); RCW (Wash.) 26.08.110 (division to be "just and equitable").

III. THE LOWER COURT DID ERR IN DENYING APPELLANT, CAUSING PREJUDICE AGAINST THE APPELLANT AND LEAVING THE APPELLANT AND THE CHILDREN OF THIS UNION WITHOUT THE CONSTITUTIONAL RIGHTS OF LIFE, LIBERTY AND PROPERTY.

The Lower Court did err in issuing an Order which violates the Appellant's Constitutional Rights under the First, Sixth, Eighth, and Fourteenth Amendments.

Under the First Amendment the Appellant has a right," to petition the government for a redress of grievances." The Lower Courts have thwarted the Appellant's effort to seek a redress of grievances and to obtain an award which is both just and equitable.

The Lower Court did err in not awarding counsel fees to the Appellant. The Lower Court did err in its blatant statement that the Appellant did not deserve counsel fees. This is not a true statement. The Appellee is the moving party in these Divorce issues. The

Appellant has only tried to protect her Constitutional Rights and the Rights of the children of this union. Under the Sixth Amendment, the Appellant has a right, " to have the assistance of counsel. The Lower Court denied the Appellant's request for counsel fees at the Equitable Distribution Trial. However, the Lower Court handed down an Order on or about January 15, 1986, which entitled the Appellant to counsel fees paid by the Appellee as soon as counsel was retained. The Appellant found counsel for the Pre-trial Hearing and the Trial/Post-Trial Hearings. Yet, the Court overlooked the counsel fees the Appellant encountered. The Appellant did not request any funds for the years in which she defended herself. Therefore, the Court should have awarded the Appellant counsel fees in the

amount of $12,000.00. Thus, the Court's decision was not "just" or "equitable".

The Court's treatment of the Appellant in these matters is a violation of the Appellant's Eighth Amendment rights. Under the Eighth Amendment the Court cannot inflict, "..cruel and unusual punishments..". The Lower Court has punished the Appellant and the parties children in its division of the marital assets, and in its lack of division of the marital debts.

The Lower Court did err in violating the Appellant's Fourteenth Amendment rights. Under the Fourteenth Amendment ,"No State shall make or enforce any law shich shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Lower Court did err in awarding the equitable division of the properties, in that the Stanton Avenue property valued at $35,000.00 by the Court, only has $4,000.00 owed on the property. Further, the Appellee has been making profits from that property for the past nine (9) years, but has not shared those profits in any from with the Appellant or the children of this union. Thus, the Lower Court in its opinion has aided the Appellee in denying the Appellant her rights to "life, liberty, and property." These are Constitutional Rights

which are supposed to be upheld by the judicial systems of this Nation.

The Appellant questions the division of marital properties exhibited by the Lower Court. The Rosecrest property should have automaticaly been awarded to the Appellant in that it is the family home and the children of the union, need a place to live. Surely, the Court would not have them living on the street. Further, the Court generally awards the family residence to the party with custody of the children. "Property both real and personal may be Ordered or transferred by one spouse to another" Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Tuyls v. Tuyls, 21 Ill. 2d 192,171 N.E. 2d 779 (19610; Smith v. Smith, 131 Ind. App. 38, 169 N.E. 2d 318 (1960); Warne v. Warne, 36 S.D. 573, 156 N.W. 60

(1916). Further when appropriate the use of property is granted to one spouse. Gilleland v. Meadows,329 S.W. 2d 485 (Tex. Civ. App. 1959) . Certainly, the Appellant should have been awarded the family home. However, the Lower Court gave the Appellant the Rosecrest property as a debt, not an asset. Thus, the award is not "just" or "equitable".

The Lower Court did err in considering the Appellee's second family which resulted from an extramarital affair with his then paramour, now wife. Not once in the Court's Opinion are the children from the first and original marriage mentioned or considered. The Courts believe that the first family is "paramount." Kephart v. Kephart, 89 U.S. App. D.C. 373, 193 F.2d 677 (1951).

The Lower Court did not consider the fact that the Appellee abandoned the family home and when he did return it was to damage the property, damages totalling approximately $5,000.00. There was no equity in the division of the property. The Court made an award that is against the Constitutional Rights of the Appellant under the First, Sixth, Eighth, and Fourteenth Amendments.

IV. THE LOWER COURT DID ERR IN NOT CONSIDERING THE ISSUES OF INSURANCE, TAXES, EDUCATIONAL EXPENSES, EQUITABLE DIVISION OF PROPERTY, ALIMONY, AND OTHER ISSUES RAISED IN THE PRE-TRIAL AND POST-TRIAL RELIEF PETITION OF THE APPELLANT.

The Appellant prepared a Pre-Trial Statement which extensively listed and distributed the marital assets equally, in her opinion. The Appellant questions why the Lower Court -- after a year of work--did not take the time to see that the Pre-Trial statement of the

Appellant was "just" and "equitable".

The Appellee filed a vague Pre-Trial Statement which did not give an accurate accounting. It was so frivolous, the Appellee filed an Amended Pre-Trial Statement, but it too lacked the relevant and important information. The Appellant's Pre-Trial Statement was detailed, concise, and full of particulars that could and should have enabled the Lower Court to render a fair and equitable division of the marital assets and the marital debts.

The Lower Court did err in denying the Appellant reimbursement for excessive tax debt on the Rosecrest property totalling $14,586.30.

The taxes should have been considered a liability that was accumulated prior to separation, during separation, and up to the date of trial. If the liabilities were not to be considered, neither should have the assets been considered. Thus, the Court's award was not "just" or "equitable".

The Lower Court did err in considering the current status of the Appellee's wife, child(ren), and not that the Appellee had a paramour and child during the time of his first marriage. This issue should not be a considering factor, or even raised in matters of Equitable Distribution in Divorce of these

parties. Especially, if it is used to deny the Appellant her Constitutional Rights to "life, liberty, and property."

The Court denied the Appellant insurance coverage, which she needs in the middle years of her life. The Appellant has a right to be covered by insurance as she was during the marriage. The Courts have even awarded insurance where necessary to protect the wife and have also ordered the husband to assign life insurance policy to the first wife, or have her listed as the beneficiary. Candler v. Donaldson, 272 F.2d 374 (6th Cir. 1959). Other cases are collected in Annot., 145 A.L.E. 522 (1943).

Thus, the Lower Court award is not "just" or "equitable".

The Lower Court did err in denying the Appellant alimony. The Lower Court did not consider the medical condition of the Appellant as substantiated by medical reports which were presented at the Trial. Thus, once again, the Lower Court made a decision that was not "just" or "equitable". The Court did not consider the issues before denying the Appellant her Constitutional Rights. The reasons for the Court decision were based upon the Court's belief that the Appellant can go out and work. Noting that the Court disregarded the medical information presented by the Appellant, there are cases where Alimony is awarded to the wife

in which she is not required to go out and work to support herself. Bilello v. Bilello, 240 La. 158, 121 So.2d 728 (1960). Further, the Court holds that the purposes and functions of alimony are related primarily to support the wife, and indirectly for the children. See Section 14.5, Supra 4. The Appellant has a serious medical condition that does not allow her to work within the capacity of her educational background which is in the Education Field. The Appellant's chronic back condition, female problems, her age, and her other medical problems hamper her chances of getting any job. The Appellee is financially able to support the Appellant and in the manner that she was accustomed to living during the marriage. Thus, the Court's decision was not "just" or "equitable".

The Lower Court did err in not considering the issue of educational responsibility on the part of the Appellee for the children of this union. The Appellant has incurred $23,810.50, for college expenses of the two children. The Appellee should be responsible for one-half of that debt totalling $11,905.25. The Lower Court did not even consider this issue. Thus, the Lower Court's decision is not "just" or "equitable".

The Lower Court did err in not considering that the Appellant paid out $2,500.00 as purchase price on the marital properties. The Court does take into consideration as to whose funds were used to purchase said properties. Tuyls v. Tuyls, 21 Ill. 2d 192,171 N.E. 2s 779 (1961); Stubblefield v. Stubblefield, 327 S.W. 2d 24 (Ky. 1959). This was not done when the division was made by the Lower Court.

The Lower Court did err in not considering the fact that the Appellant had to fight vigorously for her rights to be protected throughout the divorce and equitable distribution proceedings. The Court divided the assets as if they were saying to the Appellee, "Well done, good job." and to the Appellant, "We are punishing you for protecting your Constitutional Rights by Law." And if this is the case, then the Lower Court's award was not "just" or "equitable". It is as if the Court giveth, and the Court taketh away at the same time. There is no justice in this way of thinking, at least not for the Appellant in this case.

CONCLUSION

The petition for a writ of certiorari should be granted, or the petition should be granted and the decision below summarily reversed to uphold the Petitioner's Constitutional Rights under the First, Sixth, Eighth, and Fourteenth Amendments.

Thus, the Petitioner prays for an award which is "just" and "equitable".

Respectfully Submitted,

Carole L. Taylor,
Petitioner, Pro Se

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION

ROBERT R. TAYLOR)
Plaintiff)
VS.) No. M430 of 1979
) EQUITY
CAROLE L. TAYLOR)
Defendant)

ORDER OF COURT

AND NOW, to-wit, this 6th day of July, 1979, after hearing in Open Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that ROBERT R. TAYLOR and CAROLE LILLIAN TAYLOR are enjoined and restrained from doing any damage to property known as 6539 Stanton Avenue, City of Pittsburgh, County of Allegheny, Pennsylvania; that neither party shall unilaterally rent said property without the authorization and consent of the other party; that any contract concerning said property entered into by either party shall be null and void as to the other party; that neither party shall perform any act respecting

said property which would prejudicially affect or deprive the other of his or her rights in said property.

Kaplan J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION

ROBERT R. TAYLOR)
Plaintiff)
VS.) No. M430 of 1979
) EQUITY
CAROLE L. TAYLOR)
Defendant)

ORDER OF COURT

AND NOW, to-wit, this _____day of _____, 1985, it is hereby ORDERED, ADJUDGED, and DECREED that a hearing be set on the within Motion for Hearing for Contempt in Equity, Real Estate Involved on the ____day of _____,1985, at _____a.m., in the City-County Building.

BY THE COURT:

_____J.

to be considered with equitable distribution & alimony claims

10/22/85 Wettick

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION

ROBERT R. TAYLOR)
)
VS.) No. 487 July,1979
)
CAROLE L. TAYLOR)

ORDER OF COURT

AND NOW, to-wit, this 30 day of December, 1985, it is hereby ordered that a hearing on Carole L. Taylor's request for preliminary counsel fees for her equitable distribution, alimony and counsel fee claims are scheduled before Hearing Officer McDonald for January 15, 1986, at 9:00 A.M. Room 616

Wettick, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION
Mailed:1/27/86
Ct. Rep: C. Weiss

Date of Hearing 1/15/86
Court Action Requested:
Counsel Fees re. Equitable Dist.

ROBERT R. TAYLOR)
VS.) No. 487 July,1979
CAROLE L. TAYLOR)

HEARING SUMMARY

Appeared for: Before Hearing Officer

Plaintiff	Defendant
Net Income: $1866 +60=1926	EC 1400
Other Houshold Income: yes	-
Other Household Members: wife & 4M (of this marriage)	2c

Reccomendations: Plaintiff to pay directly to Defendant's attorney $1500 retainer fee within 20 days of receipts of a letter from the attorney verifying his hourly rate and his representation of the Defendant. Should the Defendant dismiss the attorny prior to his depletion of the $1500, any refund is to be made to the Plaintiff.

Explanation: Defendant has not yet retained an attorney, but had an estimae of a $1500 retainer fee. Hearing Officer finds that the amount of $100 to W.R. Booth in 1979 is not res judicata to additional fees. Hearing Officer did not hear any testimony that changes her findings of 10/22/and 11/1/85 regarding incomes. Plaintiff's expenses have decreased in that he has remarried.

M.R. McDonald
Hearing Officer

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION

ROBERT R. TAYLOR)
Plaintiff)
VS.) No. 487 July,1979
)
CAROLE L. TAYLOR)
Defendant)

ORDER OF COURT

AND NOW, this 19th day of February, 1986, the court having consolidated the plaintif's exceptions to the recommendation of the Hearing Officer dated January 27, 1986, previously filed and scheduled for argument on February 28, 1986, for argument on February 14, 1986, it is ORDERED that said exceptions are granted. The court is unaware of any authority which permits the granting of counsel fees in advance of retaining counsel. Defendant is given leave to request counsel fees at such time as counsel has been retained.

BY THE COURT:

Kaplan J.

MEMORANDUM AND ORDER OF COURT

WETTICK, A.J.

These are claims for equitable distribution, alimony, and counsel fees.

The parties were married in June 1965, they separated on December 30, 1976, and they were divorced in December 1980. The parties have two daughters (ages nineteen and fourteen) who live with the wife.

The husband is a counselor in the Pittsburgh Public Schools. He has annual earnings of approximately $36,000. He has been employed with the Pittsburgh Public Schools since September 1, 1965. He has remarried and this marriage has produced one child with another expected within the next few months.

During the marriage, the wife was employed on a part-time basis and attended school, earning numerous degrees. In 1971, she was graduated from college. She earned a master's degree in 1972, a Ph.D.in 1973, and a specialist

diploma for school administration in 1975. She was employed as a fulltime teacher with the Pittsburgh Public Schools from 1974 through 1979. She testified that she did not return to the public schools because of physical problems. she also testified that her current status with the school system is unclear.

Since 1979, the wife has been actively involved in establishing and administrering a community school. She has neither sought nor received compensation for her work. The reason for her extensive involvement with the community school are to advance the education of her children and because of her commitment to the education of children who have not performed well in the public schools.

She has received child support and alimony from her husband. At the most recent hearing, this court attributed net monthly earnings of $1,926 to the husband and an annual earning

capacity of $24,000 to the wife and ordered the husband to make a monthly alimony pendente lite payment to the wife of $100, a monthly payment of $275 for the support of his fourteen year old daughter, and a monthly payment of $90 for the support of his nineteen year old daughter. The wife disagreed with the court order (primarily on the basis of the earning capacity attributed to the wife) and the matter has been appealed to the Pennsylvania Superior Court.

There are outstanding arrearages. The wife contends that they are approximately $6,000 while the husband contends that this amount will be drastically reduced when the hearing scheduled on this matter is held.

The major marital assets are the marital residence at 5062 Rosecrest Place in which the wife and her children reside, rental property at 6535 Staton avenue, and the husband's retirement benefits.

In 1975, the parties purchased the property at 5062 Rosecrest Place for $36,500. They made a $2,500 downpayment and the balance was financed through a mortage. Since the date of separation, the wife and the parties' two children have resided in this residence and the wife has assumed responsibility for all payments. We value this property at $61,000. It has an outstanding mortage of approximately $29,00. Also, there are unpaid taxes which became due after separation.

We value the Stanton Avenue property at $40,000. It has a mortgage of approximately $5,000. The parties lived in this property until they moved to the Rosecrest property in 1975. From 1979 to the present, the husband has assumed primary financial responsibility for the property. He has collected rental payments

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*The wife paid approximately $2,000.00 for water, sewage, and insurance expenses.

that have permitted him to meet most of the property's expenses.

The husband has pension benefits through his employment with the Pittsburgh schools. As of the date of the hearing, the husband was eligible to retire with 25.83 years of service. Based upon a final three year average salary of $35,363 he would receive a monthly benefit payment of $939. His years of service include 4.8 years purchased in equal installments beginning in September 1976 and ending in September 1979 for time prior to the marriage in which he served in the Armed Forces of the United States and taught school in Ohio. If the 4.8 years of service, the pension service time accrued during the period of coverture was 15.83 years. We conclude that these years should be included in the pension service time accrued during the period of coverture because he acquired the right to purchase this additional time during the marriage.

We conclude that the marital assets should be divided on a 55/45 basis in the wife's favor. We divide the marital assets in this fashion because of the husband's greater earnings and earning capacity, because the wife assumed responsibility for raising the parties' two children, and because the husband has separate assets (namely, additional pension benefits following separation). We do not give the wife a greater share of the marital assets because of the husband's needs (he is raising a second family), because the husband paid for most of the 4.8 additional years of pension service time following the separation, because the wife's lack of earnings and earning capacity are the result of her failure to maximize her earning potential, and because the assets which the husband has acquired following separation are not available until his retirement.

We divide the assets (other than the retirement benefits) as follows:

Asset	Net Value
5062 Rosecrest Place	$32,000
6535 Stanton Avenue	35,000
	$67,000

Distribution

To Wife	To Husband
Rosecrest Place $32,000	Stanton Avenue $35,000

Wife's Share (55%) --$36,850
Husband's Share (45%)--$30,150

Amount Owed to Wife--$4,850

We deny the wife's claim for alimony because of the equitable distribution award that we are making, which includes fifty-five percent of the marital share of the husband's pension benefits, and because of the wife's failure to maximize her earning potential.

We award no counsel fees because of the equitable distribution award, because most of the fees that the wife incurred are the result of duplicate efforts, and because both parties incurred extensive counsel fees as a result of prolonged and unnecessary litigation for which the wife was responsible.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY PA
FAMILY DIVISION

CAROLE LILLIAN TAYLOR, Plaintiff	)	
VS.	)	No. 0487 July 1979
ROBERT R. TAYLOR, Defendant	)	

ORDER OF COURT

On this 18 day of November, 1986, it is hereby ORDERED that:

(1) The wife (Carole Lillian Taylor) is awarded the property at 5062 Rosecrest place, and she shall assume full responsibility for its mortgage. Within ninety (90) days, the husband shall execute a deed prepared by the wife's counsel conveying this property to the wife.

(2) The husband (Robert R. Taylor) is awarded the property at 6535 Stanton Avenue, and he shall assume full responsibility for its mortgage. Within ninety (90) days, the wife shall execute a deed prepared by the husband's counsel conveying this property to the wife.

(3) The wife is awarded fifty-five (55%) percent of the marital share of these benefits, the period of the pension service time accrued during the period of coveture is 15.83 years. To implement this award, the parties shall prepared a qualified domestic relations order which meets the requirements of the Retirement Equity Act of 1984 and is acceptable to the Plan Administrator.

(4) Within ninety (90) days, the husband shall pay to the wife the sum of $4,850.

(5) All other claims of either party to equitable distribution, alimony, and counsel fees are denied.

(6) Each party is awarded any other marital property that is presently in that party's possession, custody, or control.

(7) This order shall become final in accordance with Pa.R.C.P. Nos. 1920.52(a) and 227.4.

BY THE COURT:

WETTICK, A.J.

CAROLE LILLIAN TAYLOR)
) No. 487 JULY 1979
VS.)
ROBERT R. TAYLOR) COMMON PLEAS COURT
)

Notice is hereby given that the FINAL ORDER OF COURT dated January 6, 1987 has been entered and filed in accordance therewith.

John P. Joyce
PROTHONOTARY

Service of the above notice accepted this _____day of _____,19__.

_____
Counsel for Plaintiff

_____

IN THE COURT OF COMMON PLEAS OF ALLEGHENY CTY.PA
FAMILY DIVISION

CAROLE LILLIAN TAYLOR,	)	
	)	
Plaintiff.	)	
	)	
VS.	)	No. 0487 JULY 1979
	)	
ROBERT R. TAYLOR,	)	
	)	
Defendant.	)	

ORDER OF COURT

On this 6 day of January, 1987, it is hereby ORDERED that:

(1) Paragraph 2 of the November 18, 1986 order of court is amended to rend in its entirety as follows:

> "The husband (Robert R. Taylor) is awarded the property at 6535 Stanton Avenue, and he shall assume full responsibility for its mortgage. Within ninety (90) days, the wife shall execute a deed prepard by the husband's counsel conveying this property to the husband.

(2) The post trial motions of plaintiff and defendant are otherwise dismissed.

(3) The November 18, 1986 order of court, as modified pursuant to paragraph (1) of this court order, is entered as a final judgement and final order of court.

BY THE COURT:

WETTICK, A.J.

MEMORANDUM OPINION

WETTICK, A.J.

These are claims for equitable distribution, alimony and counsel fees. Following a hearing, on November 18, 1986, this court divided the marital property and denied the wife's claims for alimony, counsel fees, and costs. Both parties filed motions for post-trial relief. On January 6, 1987, this court entered an order of court which corrected an obvious error and otherwise dismissed the post-trial motions of both parties.

The wife has filed an appeal from the January 6, 1987, order of court. This Memorandum is filed pursuant to Pa.R.A.P. 1925.

The November 18,1986 order of court was accompanied by a Memorandum which set forth the November 18, 1986 order of court.

In her motion for post-trial relief, the wife raises several objections to the court's findings and award. However, the brief which accompanied the motion (a copy of which is attached) covered only the contention that the court erred in failing to deduct the sum of $8,599.31 which represents due and owing real estate taxes on the Rosecrest Place property that this court awarded to the wife.

These taxes became due and owing following the parties' sepration. This property was occupied by the wife and her children during the entire period that the taxes were not paid. Throughout this period, the husband was obligated to pay alimony pendente lite and child support pursuant to orders of court. Since these orders did not require the husband to pay the taxes, the wife was obligated to pay the taxes.* Thus, this court did not deduct the

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*Explanation eight of the Allegheny County Support Guidelins states that a support award assumes that the party occupying the marital residence will pay the mortgage and real estate taxes unless the award otherwise provides.

amount of the outstanding taxes in valuing the marital property residence which it awarded to the wife.

This court is not discussing separately each of the remaining matters raised in the motion for post-trial relief of the wife because (a) the matters were not briefed so this court is unable to anticipate the basis for the alleged errors and (b) because each of the matters involved issuses of fact and the portions of the transcript which were ordered do not contain the entire testimony covering the various matters raised in the wife's motion for post-trial relief.**

The wife appears to have three major objections to the court award. First, she contends that she should have received a greater share of the martial property. For the reasons set forth in the November 18, 1986 Memorandum,

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** The husband ordered only the portion of the transcript containing his testimony and the testimony of two real estate appraisers (Mr. Johnson and Mr. Jackson). The wife ordered only excerpts of her testimony.

this court concludes that the 55%/45% awarded in the wife's favor is equitable. There is no need to supplement these reasons because in her motion for post-trial relief the wife does not contend that the court failed to consider other relevant factors. She only disagrees with the manner in which the court weighed the factors which it considered.

Second, the wife disagrees with the award to her of 55% of the marital share of the husband's pension benefits, apparently contending that she should have received other marital property. The basis for this contention is that the husband may not receive his pension for ten to twenty years and neither party may not live that

long. But, this argument overlooks the possibility that the share of the husband's pension benefits awarded to the wife can be paid immediately to the wife. In this case, the pension is vested and the husband is eligible to retire. Consequently, the award of the pension to the wife gives her the opportunity to begin receiving income prior to the husband's retirement.

Third, the wife objects to the court's attributing an annual earning capacity of $24,00 to the wife. Shortly prior to the equitable distribution hearing , the court attributed this earning capacity to the wife in a support proceesing. She introduced no evidence of any changed circumstances. Consequently, she is bound by the finding which she vigorously contested.

For these reasons, this court entered the January 6,1987 Order of Court dismissing the wife's motion for post-trial relief.

BY THE COURT:

DATED: February 28, 1987 _____

Wettick, A.J.

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

ROBERT R. TAYLOR,	)	
	)	
V.	)	No. 173 Pittsburgh,1987
	)	
CAROLE L. TAYLOR, Appellant	)	

ORDER

AND NOW, this 8th day of September, 1987, it is ordered as follows:

X Order affirmed.
_____ Order reversed.
_____ Judgment affirmed.
_____ Judgment of Sentence affirmed.
_____ Judgment of Sentance reversed.
_____ Order vacated....
_____ Order modified...
_____ Costs to be taxed as....
_____ Costs to be taxes as....
_____ Appeal quashed.

BY THE COURT

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ROBERT R. TAYLOR :IN THE SUPERIOR COURT OF PENNSYLVANIA

V. :

CAROLE LILLIAN TAYLOR, :

Appellant : No. 00173 PGH 87

Appeal from the Order of January 6, 1987 in the Court of Common Pleas of Allegheny Cty. FAMILY DIVISION at No. 0487 July, 1979.

BEFORE: CIRILLO, P.J., HOFFMAN, AND CERCONE, JJ.

MEMORANDUM: FILED: SEPTEMBER 8, 1987

This is an appeal from the order of the lower court determining the equitable distribution of the parties' marital property and denying appellant's claims for alimony and counsel fees.[1] Appellant contends that the lower court erred in determining that (1) the property should be divided 55/45 in favor of appellant; (2) she is not entitled to alimony; and (3) she is not entitled to counsel fees. The award of alimony and the equitable distribution of marital property are within the sound discretion

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1 Appellant's brief, filed pro se, sets forth numerous sub-issues, all of which essentially challenge the factors the lower court considered in determining the equitable distribution of the marital property.

of the trial court and its decisions will not be disturbed on appeal absent an abuse of that discretion. Semasek v. Semasek, 331 Pa. Superior Ct. 1, 6, 479 A.2d 1047, 1050 (1984); Ruth v. Ruth, 316 Pa. Superior Ct. 282, 287, 462 A.2d 1351, 1353 (1983). Under the abuse of discretion standard, we are not to usurp the trial court's duty as the finder of fact. Ruth V. Ruth, supra. The award of counsel fees is also a matter of discretion vested in the trial court. Semasek v. Semasek, supra at 14, 479 A.2d at 1054.

After reviewing the record and the briefs submitted by the parties, we conclude that the lower court considered the relevant factors in making its determinations, which it set forth in its opinions, and did not abuse its discretion. Accordingly, we affirm on the basis of the lower court opinions.

Affirmed.

D4

THE SUPERIOR COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
1015 GRANT BUILDING
PITTSBURGH, PENNSYLVANIA 15219

DAVID A. SZEWCZAK, ESQUIRE
PROTHONOTARY
ELEANOR R. VALECKO
DEPUTY PROTHONOTARY
PITTSBURGH OFFICE
(412) 565-7592

November 13, 1987

Ms. Carole L. Taylor
5062 Rosecrest Place
Pittsburgh, Pa. 15201

In Re: Robert R. Taylor v. Carole Lillian Taylor, No. 173 Pittsburgh, 1987

Dear Ms. Taylor:

The Court has entered the following Order on your Application for Reargument filed in the above-captioned matter:

"ORDER OF COURT

The Court hereby DENIES appellant's application for reargument of the decision dated September 8, 1987.

November 13, 1987
Vincent A. Cirillo, P.J."

Very truly yours,

DEPUTY PROTHONOTARY

E1

The Supreme Court of Pennsylvania
Western District

Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, PA 15219
(412) 565-2816

May 5, 1988

Ms. Carole L. Taylor
5062 Rosecrest place
Pittsburgh, PA 15201

In Re: Robert R. Taylor v. Carole L. Taylor,
Petitioner No 547 W.D. Allocatur
Docket, 1987

Dear Ms Taylor:

The Court has entered the following order on your Petition for Allowance of Appeal ir the above matter:

"May 2, 1988
PER CURIAM:
Petition denied."

Very truly yours,

Irma T. Gardner
Deputy Prothonotary

cc: Laurel Diznoff, Esquire
428 Boulevard of the Allies
Pittsburgh, PA 15219

Honorable R. Stanton Wettick

The Supreme Court of Pennsylvania
Western District

Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, PA 15219
(412) 565-2816

September 19, 1988

Ms. Carole L. Taylor
5062 Rosecrest place
Pittsburgh, PA 15201

In Re: Robert R. Taylor v. Carole L. Taylor,
Petitioner No 547 W.D. Allocatur
Docket, 1987

Dear Ms Taylor:

The Court has entered the following order on your Petition for Reconsideration in the above-captioned matter:

"September 16, 1988
PER CURIAM:
Petition for Reconsideration denied"

Therefore, the Original Record in this matter has been remanded to the Court of Common Pleas of Allegheny County today, September 19, 1988.

Very truly yours,
Irma T. Gardner